

FILED
2022 DEC - 2 PM 12:01
CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 22-11148

DIVISION " 2 "

SECTION # SECTION 13

ANNY PAMELA FOSTER,
Individually, and as Personal Representative of the Estate of Glenn Foster, Jr.

VERSUS

CARRIAGE SERVICES, INC., CARRIAGE SERVICES OF LOUISIANA, INC.,
CARRIAGE SERVICES, INC. d/b/a GARDEN OF MEMORIES FUNERAL HOME,
CARRIAGE SERVICES, INC. d/b/a JACOB SCHOEN AND SON FUNERAL HOME,
JOHN APPEL, JR., NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA AND XL INSURANCE AMERICA, INC.

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES
AND JURY DEMAND

JURY

NOW INTO COURT, through undersigned counsel, comes petitioner ANNY PAMELA FOSTER (hereinafter referred to as "Petitioner") a person of the full age and majority and a resident and domiciliary of the Parish of Jefferson in the State of Louisiana (hereinafter "Petitioner") and files this Petition for Damages. Petitioner brings this Petition both individually and as Personal Representative of the Estate of Glenn Foster, Jr. With respect, Petitioner avers and alleges as follows:

I.

Made Defendants herein are:

1. Carriage Services, Inc. ("Carriage"), upon information and belief is, and at all times relevant to this action was, a foreign corporate entity authorized to do and doing business in the State of Louisiana.
2. Carriage Services of Louisiana, Inc. ("Carriage LA"), upon information and belief is, and at all times relevant to this action was, a Louisiana corporation incorporated under the laws of the State of Louisiana with its principal place of business at 501 Louisiana Ave., Baton Rouge, Louisiana 70802 and is presently authorized and doing business in the State of Louisiana.
3. Carriage Services, Inc., d/b/a Garden of Memories Funeral Home ("Garden of Memories"), upon information and belief is, and at all times

relevant to this action was, a foreign corporate entity, presently authorized and doing business in the State of Louisiana.

4. **Carriage Services, Inc., d/b/a Jacob Schoen and Son Funeral Home (“Schoen and Son”)**, upon information and belief is, and at all times relevant to this action was, a foreign corporate entity, presently authorized and doing business in the State of Louisiana.

5. **John Appel, Jr.**, upon information and belief is, and at all times relevant to this action was, a person of full age and majority and a resident of Louisiana, whose parish of residence and address is unknown.

6. **National Union Fire Insurance Company of Pittsburgh, PA (“National Union”)**, is, and at all times relevant to this action was, a foreign company authorized to do and doing business in the State of Louisiana.

7. **XL Insurance America, Inc. (“XL Insurance”)** is, and at all times relevant to this action was, a foreign company authorized to do and doing business in the State of Louisiana.

II.

Defendants are liable and unto your Petitioner for this matter, jointly, severally, and *in solido*, for damages as are reasonable, including but not limited to, breach of contract damages, attorney fees, damages for past and future emotional and mental pain and suffering, mental anguish, past and future medical expenses and rehabilitation expenses, loss of enjoyment of life, together with legal interest thereon from the date of judicial demand until paid, and for all costs of these proceedings, for the following, to wit:

III.

Defendant Schoen and Son is a funeral home located in New Orleans, Orleans Parish, Louisiana. Petitioner entered into a contract with Defendant Schoen and Son in Orleans Parish, Louisiana to provide funeral services for her deceased husband, Glenn Foster, Jr. This contract at issue in this matter was agreed to by Petitioner and Defendants in Orleans Parish, Louisiana.

IV.

Defendant Schoen and Son contracted with Defendant Garden of Memories to transport Mr. Foster's remains to Garden of Memories in order for a private autopsy to be performed at Garden of Memories.

V.

Upon information and belief, Defendant John Appel, Jr. is the funeral director and managing partner of Garden of Memories Funeral Home and is an employee of Defendants, Carriage and Carriage LA, making Defendants Carriage and Carriage LA vicariously liable for his actions.

VI.

At all relevant times herein, Defendant, John Appel, Jr. was responsible for the oversight of all employees of Defendants, Carriage and Carriage LA who worked at Garden of Memories Funeral Home, as well as responsible for the care and custody of the remains of Glenn Foster, Jr. and had a duty to Petitioner to ensure the remains of Glenn Foster, Jr. were cared for in a proper manner as required under the laws of the State of Louisiana.

VII.

At all relevant times herein, Defendants were responsible for the preservation, embalment, care, and custody of the remains of Glenn Foster, Jr., including the preparation of the remains of Glenn Foster, Jr. for transport, and had a duty to Petitioner to ensure the remains of Glenn Foster, Jr. were preserved, embalmed, and/or otherwise cared for in a proper manner as required by the laws of the State of Louisiana.

VIII.

Defendants knew or should have known that failing to properly preserve, embalm, and/or otherwise care for the remains of Glenn Foster, Jr. would cause damages to Petitioner, who is the widow of Glenn Foster, Jr.

IX.

Defendants had a duty to properly preserve, embalm, and/or otherwise care for of the remains Glenn Foster, Jr., including the preparation of the remains for transport.

X.

Defendants failed to properly preserve, embalm, and/or otherwise care for the remains of Glenn Foster, Jr., causing severe desecration of his remains, breaching their duty to Petitioner as well as their contract with Petitioner and causing the damages complained of herein.

XI.

Petitioner did not give Defendants permission to dispose of Glenn Foster, Jr.'s remains. Specifically, Petitioner did not sign an Authorization for Cremation and Disposition.

XII.

Defendants improperly destroyed and disposed of Glenn Foster, Jr.'s brain without authorization.

XIII.

As a result of Defendants' conduct, Petitioner was injured and damaged as set forth below.

CAUSES OF ACTION

Count One: Violation of La. Civ. Code Ann. art. 2315 (Negligence)

XIV.

Petitioner repeats and realleges each and every allegation set forth in paragraphs I through XIII as if fully set forth herein.

XV.

Defendants John Appel, Jr., Garden of Memories, and Schoen and Son had a duty to ensure that Mr. Foster's remains were properly preserved, embalmed, and/or otherwise cared for in accordance with Petitioner's wishes and instructions.

XVI.

At all relevant times, Defendant John Appel, Jr. acted in the course and scope of his employment with Carriage Services Inc. and Carriage Services of Louisiana, Inc., making Carriage and Carriage LA vicariously liable for his actions.

XVII.

Defendants breached their duties by failing to properly embalm, care for, and/or preserve Mr. Foster's brain as they were required. Defendants breached duties imposed by La. Civ. Code Ann. art. 2315 as well as those duties imposed by La. Stat. Ann. § 8:650-663 related to unlawful disposal, mutilation, and moving of human remains.

XVIII.

Defendants failed to properly preserve, embalm, and/or care for the remains of Glenn Foster, Jr., causing severe desecration of his remains, breaching their duty to Petitioner, and causing the damages complained of herein.

XIX.

The incident was caused by no fault of Petitioner; instead, it was caused by the negligence and/or fault of Defendants, whose negligence and/or fault includes but is not limited to the following:

- a. Negligent and improper embalming;
- b. Negligent and inadequate embalming;
- c. Negligent and inadequate preservation;
- d. Negligent and improper storage of human remains;
- e. Negligent and improper handling of human remains;
- f. Negligent and improper disposal of human remains;
- g. Negligent and improper preservation of human remains;
- h. Negligent and improper destruction of human remains;
- i. Negligent hiring;
- j. Negligent supervision;
- k. Negligent infliction of emotional distress.

XX.

National Union provided a policy of insurance, identified as policy number GL 1947019 to Defendants, Carriage Services, Inc. and Carriage Services of Louisiana, Inc., covering the subject incident and so they are liable unto Petitioner.

XXI.

XL Insurance provided a policy of insurance, identified as policy number US00065527LI21A to Defendants, Carriage Services, Inc. and Carriage Services of Louisiana, Inc., covering the subject incident and so they are liable unto Petitioner.

XXII.

As a result of the loss and destruction of Mr. Foster's brain, Petitioner, has suffered and continues to suffer mental injuries, entitling her to recover damages including but not limited to:

- a) Past, present and future mental pain and suffering; and
- b) All damages allowed under Louisiana law which may be proven at the trial of this matter.

Count Two: Breach of Contract

XXIII.

Petitioner repeats and realleges each and every allegation set forth in paragraphs I through XIII as if fully set forth herein.

XXIV.

Petitioner and Defendants are parties to a contract wherein Defendants committed to maintaining and caring for Glenn Foster, Jr.'s remains to the benefit of Petitioner and in accordance with Petitioner's instructions.

XXV.

Petitioner did not give Defendants authorization to dispose of Glenn Foster, Jr.'s remains.

XXVI.

Defendants breached their contract with Petitioner by failing to properly embalm, care for, and/or preserve Glenn Foster, Jr.'s remains, and instead destroyed Glenn Foster, Jr.'s brain without consent or authorization from Petitioner and in breach of the contract between the parties.

XXVII.

Petitioner fulfilled all of her obligations under the contract with Defendants whereas Defendants did not fulfill their obligations under the contract.

XXVIII.

National Union provided a policy of insurance, identified as policy number GL 1947019 to Defendants, Carriage Services, Inc. and Carriage Services of Louisiana, Inc., covering the subject incident and so they are liable unto Petitioner.

XXIX.

XL Insurance provided a policy of insurance, identified as policy number US00065527LI21A to Defendants, Carriage Services, Inc. and Carriage Services of Louisiana, Inc., covering the subject incident and so they are liable unto Petitioner.

XXX.

As a result, Petitioner has suffered and continues to suffer mental injuries, entitling her to damages including but not limited to:

- a) Past, present and future mental pain and suffering; and
- b) All damages allowed under Louisiana law which may be proven at the trial of this matter.

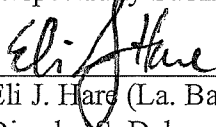
JURY DEMAND

XXXI.

Petitioner is entitled to and hereby demands a trial by jury on all triable issues.

WHEREFORE, the aforesaid premises considered, your Petitioner prays that Defendants be duly served with a copy of this petition and cited to appear and answer same, and that after due proceedings had, that there be a judgment herein in favor of your Petitioner and against Defendants herein finding said Defendants liable jointly, severally and *in solido* for the full amount of your Petitioner's damages, including attorneys' fees, and all costs together with legal interest thereon from the date of judicial demand until paid, and any other relief this Honorable Court deems proper.

Respectfully Submitted,



Eli J. Hare (La. Bar No. 36752)
Diandra S. Debrosse Zimmermann
(*Pro Hac Vice* application forthcoming)
William J. Sinor

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Counsel for Petitioner

PLEASE SERVE:

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C/O Corporation Service Company
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Baton Rouge, LA 70802
3. **CARRIAGE SERVICES, INC., d/b/a GARDEN OF MEMORIES
FUNERAL HOME**
C/O Corporation Service Company
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4. **CARRIAGE SERVICES, INC., d/b/a JACOB SCHOEN AND SON
FUNERAL HOME**
C/O Corporation Service Company
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5. **JOHN APPEL, JR.**
648 Melody Dr.
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6. **National Union Fire Insurance Company of Pittsburgh PA**
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7. **XL Insurance America, Inc.**
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